

Date: Thu, 13 Aug 1998 17:11:10 -0700 (PDT)
From: Bob Twiss <twiss@regis.berkeley.edu>
Subject: Potential problem
To: Lester Snow <rjenkins@water.ca.gov>
cc: CoreTeam <coreteam@water.ca.gov>
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To: Lester Snow,
CALFED staff

From: Bob Twiss
Rod Meade
(as members of the Core Team, Strategic Plan for Ecosystem
Restoration)

Subject: Draft Preferred Program Alternative of August 5, 1998

This is to bring to your attention a possibly serious problem which could lead to a gap between our Strategic Plan and the Draft Preferred Program Alternative, and their emphasis on the adaptive management approach. Rod and I wanted to go over this with the entire Core Team, and thus far have been able to get comments from Wim Kimmerer and Michael Healey. But a full review has not been possible, and in the interest of time this comes from Rod and myself.

The specific problem arises from the language: "A decision to construct an isolated facility will be warranted if there is a public health necessity..." [Page 12. Stage I. Conditions/Linkages/Conveyance].

The use of the term: "will", as opposed to "may" creates what appears to be a "rebuttable presumption". This issue was flagged by stakeholders at our last Core Team meeting, but its relevance to our adaptive management approach did not sink in until later discussions. Our concerns have to do with the following:

- Adaptive management is at the heart of our rationale for the Strategic Plan, and we are working hard to help CALFED define and apply this approach to decision making in all components of the CALFED program. We

are pleased to see the degree to which this concept is being embraced.

- However, adaptive management is grounded in an even-handed evaluation of information, with the understanding that there will be uncertainty surrounding important decisions, and that information will always be incomplete and imperfect.

- Even with a greatly expanded effort in research and information management, it is unlikely that information can be developed in Stage I. that would carry the burden of proof necessary to outweigh a rebuttable presumption.

- Given the importance the isolated facility, if the decision on this issue (or other major actions) is set up as a rebuttable presumption, the Strategic Plan's reliance on adaptive management will appear to be naïve at best. Worse, it could be seen as a smokescreen for efforts to move forward on a business as usual basis.

- If this language and approach in fact must persist in the EIR/EIS, the Core Team may need to give greater weight to assurances, and to other Stage I actions that will prepare the ground for the Stage II transition.

- Also of concern to us is that a rebuttable presumption would have the unintended effect of removing the incentive for water users to support the scientific studies that are essential to adaptive management, again undermining the substance and credibility of our approach.

- Finally, we are concerned that this issue could impact our recommended compliance strategy, in that it would increase the information needs and burden of proof that would be borne by the PEIS/PEIR at a time when CALFED has determined not to attempt to provide additional documentation.

These comments are offered in an effort to head off potential problems, and to help guide us in our final drafting of what must be a credible planning strategy.

If it turns out that we are making too much of this issue, and that the "will" can easily be (or has already been) replaced by "may", then we can rest easy. But if the issue is real, we will all need to get to work to straighten this out.

Regards,

Bob Twiss
Rod Meade